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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH**

PURPLE INNOVATION, LLC,

Plaintiff,

v.

**RESPONSIVE SURFACE
TECHNOLOGY, LLC, PATIENTECH,
LLC, and ROBERT GOLDEN,**

**Defendants, Counterclaim
Plaintiffs, and Third-Party
Plaintiffs,**

v.

**PURPLE INNOVATION, LLC, GARY
DICAMILLO, ADAM GRAY, JOSEPH
MEGIBOW, TERRY PEARCE, TONY
PEARCE, and JOHN DOE NOS. 1-4,**

**Counterclaim Defendant and
Third-Party Defendants.**

**PLAINTIFF'S RESPONSE TO
DEFENDANTS' NOTICE OF
SUPPLEMENTAL AUTHORITY**

Civil No.: 2:20-cv-708

Consolidated No. 2:20-cv-727

Honorable Robert J. Shelby

Magistrate Judge Cecilia M. Romero

Pursuant to DUCivR 7-1(c), Purple Innovation, LLC (“Purple”), through counsel MAGLEBY CATAXINOS, PC, submits this Response to Notice of Supplemental Authority.

On June 6, 2024, Defendants Responsive Surface Technology, LLC and PatienTech, LLC (collectively “ReST”) submitted a Notice of Supplemental Authority, Dkt. 240 (“Notice”). In the Notice, ReST stated that *Coinbase, Inc. v. Suski*, 144 S. Ct. 1186, 1193 (2024) is relevant to its argument regarding whether attorney fees could be awarded by the arbitrator based upon a request for fees made in the arbitration. [See Notice, Dkt. 240]; [2024-06-06 ReST’s Motion to Vacate, Modify, or Correct Arbitration Award at 16-20, Dkt. 226]. Contrary to what ReST suggests, in *Coinbase* the parties entered into two agreements where the initial agreement required all disputes be decided by an arbitrator, and the subsequent agreement provided that all disputes must be decided by California courts. See *Coinbase, Inc. v. Suski*, 144 S. Ct. 1186, 1190 (2024). The Supreme Court was presented with a question: “When two such contracts exist, who decides the arbitrability of a contract-related dispute between the parties—an arbitrator or the court?” *Id.* In other words, “who—a judge or an arbitrator—should decide whether a subsequent contract supersedes an earlier arbitration agreement that contains a delegation clause.” *Id.* 1192. The Supreme Court concluded that, under these circumstances, “a court, not an arbitrator, must decide whether the parties’ first agreement was superseded by their second.” *Id.* at 1195.

Here, this Court has already decided the arbitrability of the dispute between Purple and ReST. [See 2021-09-01 Minute Order Granting Motion to Compel Arbitration, Dkt. 190]. The merits of this case have been decided by the arbitrator. As such, *Coinbase* is irrelevant to the issue before this Court because *Coinbase* addresses

the issue of the arbitrability of the dispute with two competing arbitration provisions, not whether the arbitrator's award should be vacated or modified after the court has compelled arbitration.

DATED this 13th day of June 2024.

MAGLEBY CATAXINOS, PC



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CERTIFICATE OF SERVICE

I hereby certify that I am employed by the law firm of MAGLEBY CATAXINOS, PC, 141 W. Pierpont Avenue, Salt Lake City, Utah 84101, and that pursuant to Rule 5(b) of the Federal Rules of Civil Procedure, a true and correct copy of the foregoing

PLAINTIFF'S RESPONSE TO DEFENDANTS' NOTICE OF SUPPLEMENTAL

AUTHORITY was delivered to the following this 13th day of June 2024, by CM/ECF

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